

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

vs.

VINCENT D. WILLOUGHBY,

Respondent.

No. 12-1881 PO

DECISION

Vincent D. Willoughby is subject to discipline because he committed a criminal offense.

Procedure

On October 18, 2012, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Willoughby. Willoughby was personally served with the complaint and our notice of complaint/notice of hearing on February 22, 2013. He did not file an answer.

The Director filed a motion for summary decision on April 29, 2013. We notified Willoughby that he should file any response by May 15, 2013, but he filed nothing.

By failing to answer or otherwise respond to the complaint, Willoughby has admitted the allegations contained therein. 1 CSR 15-3.380(7)(C)1.¹ By failing to respond to the motion for

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

summary decision, he has also failed to raise a genuine issue as to the facts the Director established in his motion. 1 CSR 15-3.446(6)(B).

Accordingly, the findings of fact are based on the allegations contained in the complaint and the documents submitted in connection with the Director's motion for summary decision: the Director's statement of uncontroverted material facts, certified copies of criminal records, and the unanswered request for admissions served on Willoughby on March 18, 2013. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required. *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985). Such a deemed admission can establish any fact or any application of law to fact. *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976). That rule applies to all parties, including those acting *pro se*. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983). Section 536.073² and 1 CSR 15-3.420(1) apply that rule to this case. Therefore, the following findings of fact are undisputed.

Findings of Fact

1. Willoughby holds a peace officer license issued by the Director that was current and active at all relevant times.
2. Between July 1, 2010, and October 31, 2011, Willoughby was legally obligated to provide adequate support for his minor child pursuant to a support order entered against him in 1999 in the Circuit Court of Newton County.
3. Willoughby knowingly failed to provide adequate support as ordered for his minor child in July, August, September, November, and December 2010; and January through October 2011.

²RSMo 2000. Statutory references, unless otherwise noted, are to RSMo Supp. 2012.

4. On June 6, 2012, Willoughby pled guilty to the Class D felony of non-support, total arrears in excess of 12 monthly payments due, a violation of § 568.040, in McDonald County Circuit Court. The court suspended imposition of sentence and ordered five years' probation.

Conclusions of Law

We have jurisdiction to hear this case. Section 590.080.2. The Director has the burden of proving by a preponderance of the evidence that Willoughby has committed an act for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

The Director alleges that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

Willoughby pled guilty to non-support, total arrears in excess of 12 monthly payments due under order of support, a Class D felony under § 568.040. A guilty plea is competent and substantial evidence that Willoughby committed the crime. *Director of Public Safety v. Bishop*, 297 S.W.3d 96, 99 (Mo. App. W.D. 2009). As Willoughby presented no evidence to the contrary, we conclude that he did so. He is subject to discipline under § 590.080.1(2).

Summary

There is cause for discipline under § 590.080.1(2). We cancel the hearing.

SO ORDERED on May 20, 2013.

/s/ Karen A. Winn

KAREN A. WINN

Commissioner